

Florida House of Representatives

Marco Rubio, Speaker
Office of the General Counsel

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FORMAL OPINION 07-04

To: Representative Janet Long, District 51

Prepared by: Jeremiah Hawkes, General Counsel
Jason Allen, Staff Attorney

Date: October 1, 2007

RE: Conflict of Interest for Employment with Home Health Agency

You inquired whether it is a conflict of interest for a member of the House of Representatives to work for a home health agency doing marketing and educational presentations as well as working on a pilot program to mitigate cost related to 911 non-emergent calls in Pinellas County.

The question is answered in the negative, subject to certain conditions set out below.

First, Article II, section 8(e), Florida Constitution, provides:

No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

Therefore, the only prohibition found in the Florida Constitution is from representing the home health agency before the Legislature or before any other state agency. Your inquiry letter indicates you would be a representative on behalf of the home health agency. As a member of the House, you would be prohibited from interacting with a state agency on behalf of the home health agency.

Second, Section 112.313(7)(a), F.S., is the statutory prohibition on conflicting employment for public officers and provides:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

This section prohibits employment in the following three situations: (a) employment in regulated entities; (b) employment that would create a frequently recurring conflict; and (c) employment that would impede the full and faithful discharge of his or her public duties.

Home health agencies are licensed and regulated by the State of Florida, specifically the Agency for Health Care Administration (AHCA) pursuant to Florida Statute 400.461. However, 112.313(7)(a)(2), F.S., contains an exemption:

When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

The Legislature has given the power to regulate home health agencies to AHCA, therefore this exemption applies and a conflict would not be present. Moreover, if an argument was made that the Legislature was the ultimate regulator of the entity, the exemption covers that as well, since the regulation would be strictly through the enactment of laws or ordinances.

The second clause of 112.313(7)(a), F.S., prohibits employment that would create a frequently recurring conflict. You have provided no evidence that there would be any conflict, let alone, one that is frequent in nature, consequently the second clause would also not limit the employment.

The third clause of 112.313(7)(a), F.S., prohibits employment that would impede the full and faithful discharge of your public duties. Again, there is no evidence that employment with a home health agency would impede the discharge of your duties, so there would be no conflict.

Therefore, there is no indication that section 112.313(7)(a), F.S., would prohibit your employment.

Finally, House Rule 15.4 deals with conflicting employment and provides:

A member shall:

(a) Scrupulously comply with the requirements of all laws related to the ethics of public officers.

- (b) Not allow personal employment to impair the member's independence of judgment in the exercise of official duties.
- (c) Not directly or indirectly receive or agree to receive any compensation for any services rendered or to be rendered either by the member or any other person when such activity is in substantial conflict with the duties of a member of the House.

The first requirement of rule 15.4, is satisfied as explained in the preceding paragraphs. There is no indication that the second requirement would not be able to be fulfilled. Finally, the duties as you have described them, would not conflict with your duties as a member of the House.

Florida has citizen legislators and the laws and House rules should be not be construed to limit the employment of a legislator when there is no indication that the legislator's independence or judgment would be impaired. Therefore, in analyzing your situation, there does not appear to be a conflict of interest between your duties as a member of the House and employment with a home health agency.

This opinion is prepared in accordance with House Rule 15.8. Pursuant to that rule this opinion could be subject to revision.

cc: Office of the Speaker
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 Committee on Ethics & Elections
 Commission on Ethics
 Steven Kahn, Senate Counsel
 Jay Vail, Senate Counsel
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